

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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| GERARDO GARZA MONTENEGRO, Petitioner, vs. YANKTON FPC, WARDEN; Respondent. | 4:21-CV-04051-RAL OPINION AND ORDER GRANTING RESPONDENT'S MOTION TO DISMISS |
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Petitioner Gerardo Garza Montenegro, an inmate at the Yankton Federal Prison Camp in Yankton, South Dakota, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1. On May 24, 2021, Respondent moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Doc. 12. Petitioner did not oppose the motion.

Petitioner seeks to redeem earned time credits under the First Step Act (FSA). Doc. 1 at 8. Under the FSA, time credits may be earned by eligible prisoners who successfully complete “evidence-based recidivism reduction programming” or “productive activities.” 18 U.S.C. § 3632(d)(4)(A). The Bureau of Prisons (BOP) has a phase-in period until January 15, 2022, to provide evidence-based recidivism programs and productive activities to *all* prisoners. *Id.* § 3621(h)(2) (emphasis added). In *Holt v. Warden*, this Court held that it cannot force the BOP to apply earned time credits toward prerelease custody before January 15, 2022. 2021 WL 1925503, at *5-6 (D.S.D. May 13, 2021). Thus, an inmate that seeks to have the Court compel the BOP to apply the credits before January 15, 2022, does not have standing and his/her petition must be dismissed for lack of subject matter jurisdiction. *See id.* Here, Petitioner seeks to have

the Court order the BOP to apply his earned time credits. See Doc. 1 at 8. At this time, the Court cannot compel the BOP to apply earned time credits.

Therefore, it is hereby

ORDERED that Respondent's motion to dismiss for lack of subject matter jurisdiction, Doc. 12, is granted.

DATED July 21st, 2021

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE